

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 3:08-CR-048

-vs-

Judge Thomas M. Rose

KENDRA SASSER,

Defendant.

**ENTRY AND ORDER OVERRULING KENRA SASSER'S MOTION TO
DISMISS COUNTS ONE AND TWO OF FIRST SUPERSEDING INDICTMENT
(DOC #67).**

On March 23, 2009 the Defendant filed a Motion to Dismiss (Doc #67) count one, attempted sexual exploitation of a child pursuant to 18 U.S.C §2251(a) and (e), and count two, attempted receipt of child pornography pursuant to §2252(a)(2) and (b)(1), of the Superseding Indictment. The Defendant, through this Motion, requests the court to dismiss the Superseding Indictment against her on Commerce Clause, First Amendment, and Due Process grounds found in her original Motion to Dismiss (Doc. #39), her Motion to Reconsider (Doc. #46), the Reply to Response (Doc. 50), and her Motion to Dismiss Under Due Process Clause (Doc. #52). The

Government on May 28, 2009 filed a response in which it countered that the Defendant is not entitled to a pretrial hearing on this issue pursuant to Federal Rule of Criminal Procedure 12(b)(2) and that the Defendant's Commerce Clause, First Amendment, and Due Process claims are precluded by Supreme Court precedent. While the Defendant asserts that the alleged conduct has an insufficient affect on interstate commerce, the Government has rejected this basis, asserting that the conduct implicates Congress's power to regulate things in and the instrumentalities of interstate commerce.

For the reasons stated in the Court's first Entry and Order Denying Defendant's Motion to Dismiss Without Prejudice to Renewal (Doc #43), Entry and Order Denying Defendant's Motion to Reconsider (Doc #51), and Entry and Order Denying Defendant's Fifth Amendment Challenge (Doc #59) the Court OVERRULES the Defendant's Motion to Dismiss Counts one and two of the First Superseding Indictment (Doc #61).

DONE and **ORDERED** in Dayton, Ohio, this Eighteenth day of June, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE